IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.37263 OF 2002

1. K.Muthukumaraswamy
2. T.R.Margabandusamy
3. P.Thilagavathy .. Petitioners

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Chennai-9.

2. The Director of Technical Education,
Chennai-25.

3. The Additional Director of
(Polytechnic)
Technical Education,
Chennai-25.

4. Tamil Nadu Administrative Tribunal,
rep. by its Registrar,
High Court Campus,
Chennai-104. .. Respondents

For Appellants :: Mr.Vijay Narayanan

For Respondents :: Mr. S.T.S.Murthi, Spl.G.P.

Prayer: This Writ Petition is filed under Article 226 of the Constitution, praying for issuance of Writ of Certiorarified Mandamus, for the reliefs as stated therein.

:ORDER

F.M.IBRAHIM KALIFULLA, J.

This Writ Petition is against the order of the Tamil Nadu State

Administrative Tribunal dated 31-7-2002 in O.A.No.4861 of 1999 rejecting the petitioners' application seeking to quash G.O.Ms.Nos.1081 Education, dated 19-8-1989, 723 Education, dated 14-8-1992, 720 Education (J) Department, dated 27-7-1993 and part of G.O.Ms.No.939 Education, Science and Technology dated 20-5-1983 in fixing the number of service as 10 years as Senior Lecturer to the applicants for further upgradation to the post of Head of the Department. The petitioners also sought for a direction in the said O.A. for their up-gradation under Flexible Complimentary Scheme to the post of Head of the Department of Chemistry from the date when they completed 3 years of experience in the post of Senior Lecturer in accordance with the provisions contained in G.O.Ms.No.720 Education, dated 27-7-1993.

2. The petitioners who possessed a B.Sc. Degree in Chemistry, claimed that they joined the Department of Technical Education on 2-3-1970, 1-2-1965 and 10-1-1972 respectively as Junior Instructors in Chemistry. It is common ground that subsequently, the post of Junior Instructor and Senior Instructor got merged with effect from 1-1-1974 with a common scale of pay and the post was re-designated as Instructor. The petitioners were promoted to the post of Associate Lecturer in Chemistry by way of up-gradation in terms of G.O.Ms.No.2044 Education, Science and Technology Department, dated 14-9-1992 with retrospective effect from 2-3-1980, 1-12-1977 and 10-1-1982 respectively. Though the minimum qualification even for the post of the Senior Instructor as well as the Associate Lecturer was M.Sc., at the time of merger, when the petitioners became instructors, they were exempted from having the qualification of M.Sc. The said exemption was continued to be extended when they were subsequently promoted to the post of Associate Lecturer.

3. By G.O.Ms.No.939 Education, Science and Technology Department dated 20-5-1983, a scheme known as 'Flexible Complimentary Scheme' came to be introduced to avoid stagnation in lower post by which a person who had put in 10 years of service in a lower post was made eligible to move to the next higher category when he completes 10 years of service subject to the person possessing the qualification prescribed for the higher category. By G.O.Ms.No.1081 dated 19-8-1989, it was stipulated that persons holding post-graduate qualification with 55% marks alone would be entitled to be promoted to the post of Lecturer. By virtue of the said G.O., the petitioners were informed by an order dated 6-1-1991 that they were not eligible for being promoted to the post of Lecturer.

4. The petitioners filed O.A.No.5165 of 1992, and the Tribunal by an order dated 27-5-1997 while setting aside that part of the stipulations contained in G.O.Ms.Nos.723, dated 14-8-1992, and 1081 dated 19-8 -1989, in so far as they excluded persons like that of the petitioners holding a mere degree in Chemistry for further promotion by way of up-gradation to the post of Lecturer under the 'Flexible Complimentary Scheme' directed to the concerned authorities to upgrade the petitioners to the post of Lecturer with effect from the date on which they completed 10 years of service respectively in the post of Associate Lecturer with all consequential service benefits. The Tribunal relied upon G.O.Ms.No.221, dated 10-5-1990 while granting the above said relief.

5. It is not in dispute that the said order of the Tribunal became final and the same was also implemented, whereby, the petitioners were promoted as Lecturers. When the post of Lecturer was re-designated as Senior Lecturer, then again the petitioners were up-graded to the post of Senior Lecturer exempting them once again from possessing M.Sc. Degree by virtue of application of G.O. Ms.No.221 dated 10-5-1990. The petitioners who were aspiring for further up-gradation to the post of Head of the Department of Chemistry, the petitioners came forward with the present O.A. before the Tribunal seeking for the relief as referred to earlier.

6. The petitioners filed the present O.A.5165 of 1992 in the year 19 92 and before filing the same, they did not approach the respondents seeking for their up-gradation by way of either implementation of the 'Flexible Complimentary Scheme' or on the basis of G.O.Ms.No.221, dated 10-5-1990 providing for relaxation of rules relating to possession of minimum educational qualification applicable to the post of Head of the Department. In fact, the claim of the petitioners before the Tribunal was by way of an anticipatory sanction to be granted in their favour by way of up-gradation to the post of Head of the Department based on various Government Orders and on the assumption that the exemption from possessing the necessary qualification granted in their favour pursuant to the earlier order of the Tribunal in O.A.No.5165 of 1992 should enure to their benefit eternally without any limitation.

7. It is heart-rending to note that the petitioners who were holding a mere degree in B.Sc. Chemistry were wanting to reach the highest post in that Department without taking any effort at any point of time i.e. from the date of their appointment as Junior Instructor till they became Senior Lecturer to equip themselves with the necessary higher qualification while aspiring for up-gradation to the highest post of Head of the Department. In other words, while in a span of about 30 years duration, when much water had flown in the field of Education by way of higher studies and there being every scope for a common man to acquire higher qualifications without any limitation, it was unfortunate that the petitioners who were aspiring for up-gradation at every stage in the ladder of promotion, did not take any effort to acquire the higher qualifications which was mostly needed for a teaching staff in order to provide better education qualitatively to their wards. It is a matter of grave apathy on the part of the petitioners in not having taken any interest towards that direction while they wanted every benefit that would accrue to the higher post of Head of the Department without equipping themselves for holding that post. When Education was described as 'Teacher of a Teacher' by the Honourable Supreme Court, it was unfortunate that the petitioners as teachers never showed any enthuse to equip themselves with better qualification, but continued to be satisfied with the possession of a mere degree of B.Sc. Chemistry, while in the same breadth they wished to be upgraded to the highest post of Head of the Department, which they did not deserve by virtue of lack of necessary qualification.

8. In the above said back ground, when the claim of the applicants before the Tribunal is analyzed, it can be safely held that either by applying the stipulations contained in the 'Flexible Complementary Scheme' as provided in G.O.Ms. No.939 dated 20-5-1983 or G.O.Ms.No.221 dated 10-5-1990, the petitioners were not eligible to be considered for the up-gradation as

provided in G.O.Ms.No.1081 dated 19-8-1989 even when construed along with G.O.Ms.No.723 dated 14-8-1992 which provided a saving clause to G.O.Ms.No.1081, dated 19-8-1989. When in the first place, in G.O.Ms.No.939 dated 20-5-1983 under the 'Flexible Complementary Scheme Clause, it is made clear that the up-gradation order under the said scheme was subject to the condition that the technical personnel who are to be up-graded should possess the qualification prescribed for the higher category, in G.O.Ms.No.221 dated 10-5-199 0, though it was provided therein that any relaxation provided earlier from possessing a qualification should be held valid for all future promotions, it was made clear that relaxation of qualification rules should as far as possible be avoided especially in cases where the qualification is considered absolutely necessary for manning the higher posts in the same service. Thus in G.O.Ms.No.221, dated 10-5-1990, irrespective of the concession to the effect that relaxation once granted, should enure to the benefit of concerned person for future promotions, a caution was however made that the same should not be automatic in all cases, but should be applied with all care and caution when it comes to the question of a higher post in the same service. It may be true that the petitioners were able to be successful in the earlier O.A. before the Tribunal while seeking for up-gradation from the post of Assistant Lecturer to the post of Lecturer by virtue of completion of 10 years of service. But the same yardstick cannot be universally applied for all time to come as claimed by the petitioners even for the up-gradation to the highest post of Head of the Department when the petitioners continued to be highly optimistic in the matter of holding their qualification in the static position of mere possession of a degree alone. When the various Government Orders came to the aid of the persons holding different posts to get themselves upgraded to the higher posts by providing certain concession under certain schemes like the one, namely, 'Flexible Complimentary Scheme', a further special concession cannot be shown to the petitioners alone by compromising on the required qualification that too for the highest post in their service, namely, the post of Head of the Department. Viewed in that respect, it cannot be held that the stipulations contained in G.O.Ms.Nos.1081 dated 19-8-1989, 723, dated 14-8-1992 and 720 dated 27-7-1993 as unreasonable or so very oppressive in order to to be set at naught to enable the petitioners to achieve the upgradation to the post of Head of the Department for mere asking. Therefore, looked at from any angle, there was no justification in the petitioners' claim made in the O.A. and the Tribunal rightly rejected their claim. We, therefore do not find any good grounds to interfere with the order of the Tribunal impugned in this Writ Petition.

In the result, the Writ Petition fails and the same is dismissed. No costs.

Index: Yes
Internet: Yes
suk

To

1. The Secretary to Government,
State of Tamil Nadu,
Education Department,
Chennai-9.

2. The Director of Technical Education,
Chennai-25.

3. The Additional Director of
(Polytechnic)
Technical Education,
Chennai-25.

4. Tamil Nadu Administrative Tribunal,
rep. by its Registrar,
High Court Campus,
Chennai-104.